IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.381/2007.
(Smt. Sushila Vs. Padam Chand & Anr.)

DATE OF ORDER : September 21st, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. N.K. Bohra for the petitioner.
Mr. Vishnu Kachchhawaha, P.P.

BY THE COURT :

In this revision petition, the petitioner is challenging the order dated 12.04.2007 passed by the Addl. Sessions Judge No.3, Jodhpur in Criminal Appeal No.28/2007 whereby the appeal filed by the petitioner against order dated 13.03.2007 passed by the trial Court, learned Judl. Magistrate No.6, Jodhpur in Misc. Criminal Case No.11/2006 under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter, the Act of 2005) was dismissed.

According to facts of the case, a complaint was filed by the petitioner under Section 12, read with Section 17, 18 and 19 of the Act of 2005 against non-petitioner Padam Chand. Alongwith the said complaint, an application under Section 23 of the Act of 2005 was also filed on behalf of the petitioner as well as her children viz., (1) Monka, aged 9 years, (2) Vijendra, aged 7 years and (3) Sunil, aged 5 years. In that application, the petitioner prayed that the non-petitioner may be directed to pay the expenses for maintenance of the children besides herself. The petitioner also prayed that the S.H.O., Police Station Pratap Nagar may be directed to give protection against the violence of the non-petitioner. After notice, a reply was filed by the non-petitioner to the said application filed under Section 23 of the Act of 2005 and, after considering the reply, the learned trial Magistrate vide order dated 13.03.2007 dismissed the application and rejected the prayer of the petitioner. Against that order, the petitioner preferred appeal which, too, was dismissed by the appellate Court vide the impugned order dated 12.04.2007, as noted above, on the ground that the children are residing with their father non-petitioner Padam Chand and there was compromise arrived at in between the parties on 01.12.2006. It is also observed in the impugned order that it is obvious from the compromise and the fact that non-petitioner did not refuse to allow the petitioner to live with him but she herself is not maintaining the children and no allegations are levelled by the petitioner against the non-petitioner. While dismissing the appeal, the appellate Court also observed that the order passed by the trial Court under Section 23 is an order for interim arrangement.

Learned counsel for the petitioner, Shri Neel Kamal Bohra vehemently argued that both the Courts below have committed error in not passing order on interim prayer for maintaining her and restraining him from violence against her.

He has cited the judgment of the Kerala High Court in the case of Sulochana & Others Vs. Kuttappan & Others, reported in 2007 (2) RCR (Cri.) 744.

I have considered the submissions advanced by the learned counsel and also perused the record of the case.

At the outset, it may be made clear that the present proceedings is in connection with rejection of interim application and the matter is still pending final adjudication before the trial Court. In exercise of revisional jurisdiction, it is true that interference with concurrent finding is not desirable and more so when the discretion left to the trial Court is exercised by the trial Court upon the facts of the case. In the circumstances, there is hardly any occasion for interference by this Court. Section 23 of the Act of 2005 runs as under :

> "**23.Power to grant interim and ex parte orders**.-(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
> (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

According to the aforequoted section, the discretion is left to the Magistrate, even in any proceeding before him under the Act of 2005, to pass such interim order as he may deem just and proper and, further, upon his satisfaction that prima facie there is reason to believe commission of or likelihood of commission of domestic violence, in the circumstances, he may grant ex parte order on the basis of the affidavit in such form, as may be prescribed.

After perusal of the record, in my opinion, there does not appear specific allegations against the non-petitioner made by the petitioner. In his reply, the non-petitioner disclosed before the Court that he is ready to live with the

petitioner and, at present, the petitioner is not maintaining the children and she herself neglected the children. The learned Magistrate, having found that the facts pleaded in the application are not borne out by the circumstances revealed before the Court, categorically observed that there is no justifiable ground for passing any interim order. The learned Magistrate has exercised discretion judiciously and, therefore, the conclusion of the trial Court does not require interference. Similarly, the learned appellate Court has rightly upheld the order passed by the trial Magistrate in exercise of the power under Section 23 of the Act of 2005. The judgment cited by learned counsel for the petitioner, reported in 2007 (2) RCR (Cri.) 744 turns on different set of facts and circumstances and, therefore, is not applicable to the present case. In my opinion, the concurrent finding of both the Courts below does not require any interference in exercise of the revisional jurisdiction.

However, in this case, something must be observed about the inaction on the part of the State officials because in the Act of 2005 there is specific provision for appointment of Protection Officer under Section 8 which reads as under :

> "**8. Appointment of Protection Officers**.-(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.
>
> (2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.
>
> (3) The terms and conditions of service of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed."

Similarly, the Act of 2005 further casts duty upon the State for extending protection of the rights and interests of women by lawful means by way of

appointing/nominating service providers and sub-section (2) of Section 10 of the Act of 2005 confers specific powers upon the such service providers which are enumerated in clauses (a), (b) and (c) as under :

> "(2) A service provider registered under sub-section (1) shall have the power to -
>
> (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
>
> (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
>
> (c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place."

The remarkable feature of the legislation is that protection is also statutorily granted to such service providers and no suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

For the aforesaid provisions, the Act of 2005 lays down vide section 10 (1) that subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other

assistance shall register itself with the State Government as a service provider for the purposes of this Act.

It is informed by learned counsel for the petitioner that till today the State Government has not appointed any Protection Officer though the Act of 2005 was made applicable with effect from 26.10.2006. The whole purpose of enactment of this Act is to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Thus the State Government is under obligation to comply with the statutory provisions casting duty upon the State while bringing the Act into force. It is really very sorry aspect of the matter that till today the State Government has not addressed itself to the mandatory provisions of the Act which necessarily go a long way for the achievement of the aim and objective for enactment of the Act of 2005.

Therefore, the State Government is directed to appoint Protection Officers and also get registered with it adequate number of service providers within a period of three months. The Registry is directed to send a copy of this order to the Chief Secretary to the Government of Rajasthan.

The revision petition itself is dismissed with aforesaid direction to the State.

(Gopal Krishan Vyas) J.

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